

S. M. STOLLER CORP.
2597 B ¾ ROAD
GRAND JUNCTION, COLORADO 81503

REPRESENTATIONS AND CERTIFICATIONS

REPRESENTATIONS AND CERTIFICATIONS	Reference <input type="checkbox"/> Solicitation # _____ <input type="checkbox"/> File Reps and Certs
Name and Address of Offeror (Name, Street, City, State, & Zip Code)	Date of Offer

"Solicitation" means "Invitation for Bids" in sealed bidding and "Request for Proposal" or "Request for Quotation" in negotiation.

"Offer" means "Bid" in sealed bidding and "Proposal" in negotiation. "Offeror" means the person or firm submitting the offer.

The Offeror makes the following Representations and Certifications as a part of the offer identified above. (Check appropriate boxes and fill in blanks.)

1. SMALL BUSINESS CONCERN REPRESENTATIONS

- (a) Representation. The offeror represents and certifies as part of its offer that it ☐ is or ☐ is not a small business concern.
- (b) Definitions. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominate in the field of operation in which it is bidding on Government subcontracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (c) Notice. Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small business concern in paragraph (a) of this clause in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal Law that specifically references section 8(d) for a definition of program eligibility shall
 - (1) be punished by imposition of a fine, imprisonment, or both;
 - (2) be subject to administrative remedies; and
 - (3) be ineligible for participation in programs conducted under the authority of the Act.

2. TAXPAYER IDENTIFICATION

- (a) Definitions.
 - (1) "Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal Income tax returns on a consolidated basis, and of which the offeror is a member.
 - (2) "Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.
 - (3) "Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number

required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns.

- (b) The offeror is required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the IRS. If the resulting contract is subject to the reporting requirements described in 4.902(a), the failure or refusal by the offeror to furnish the information may result in a 20 percent reduction of payments otherwise due under the contract.
- (c) Taxpayer Identification Number (TIN).
- ☐ TIN: _____
 - ☐ TIN has been applied for.
 - ☐ TIN is not required because:
 - ☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U. S. and does not have an office or place of business or a fiscal paying agent in the U.S.;
 - ☐ Offeror is an agency or instrumentality of a foreign government;
 - ☐ Offeror is an agency or instrumentality of a Federal, state, or local government;
 - ☐ Other, State basis _____
- (d) Corporate Status.
- ☐ Corporate providing medical and health care services, or engaged in the billing and collection of payments for such services;
 - ☐ Other corporate entity;
 - ☐ Not a corporate entity;
 - ☐ Sole proprietorship;
 - ☐ Partnership;
 - ☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).
- (e) Common Parent.
- ☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.
 - ☐ Name and TIN of common parent

NAME _____
TIN _____

Items 3, 4, 5 and 6 need to be checked only if offer exceeds \$10,000 in amount.

3. WALSH-HEALEY PUBLIC CONTRACTS ACT REPRESENTATION

(Applicable to supply contracts unless exempted by the Secretary of Labor.)

The offeror represents as a part of this offer that the offeror is ☐ or is not ☐ a regular dealer in, or is ☐ or is not ☐ a manufacturer of, the supplies offered.

4. PREVIOUS SUBCONTRACTS AND COMPLIANCE REPORTS

The offeror represents that --

- (a) It ☐ has, ☐ has not participated in a previous subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;
- (b) It ☐ has, ☐ has not, filed any required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract award.

5. AFFIRMATIVE ACTION COMPLIANCE

(Applicable to other than construction contracts which include the clause Equal Opportunity.)

The offeror represents that --

- (a) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor.
- (b) It ☐ has not previously had subcontracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

6. CERTIFICATION OF NONSEGREGATED FACILITIES

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.
- (b) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will --
 - (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain the certifications in the files; and
 - (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES.

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

7. WOMEN-OWNED SMALL BUSINESS REPRESENTATION

- (a) Representation. The offeror represents that it ☐ is, ☐ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

8. SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION

- (a) Representation. The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.
- (b) Definitions.
 - (1) Asian Pacific Americans, as used in this provision, means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U. S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

- (2) Indian tribe, as used in this provision, means any Indian tribe, band, nation, or other organized group of community Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U. S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides.
- (3) Native Americans, as used in this provision, means American Indians, Eskimos, Aleuts, and native Hawaiians.
- (4) Native Hawaiian Organization, as used in this provision, means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by the Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.
- (5) Small disadvantaged business concern, as used in this provision, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization and which means the requirements of 13 CFR part 124.
- (6) Subcontinent Asian Americans, as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.
- (c) Qualified groups. The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other individuals found to be qualified by SBA under 13 CFR 124. The offeror shall presume that socially and economically disadvantaged entities also, include Indian tribes and Native Hawaii Operations.

9. TYPE OF BUSINESS ORGANIZATION

The bidder/offeror or quoter, by checking the applicable box, represents that --

- (a) It operates as ☐ a corporation incorporated under the laws of the State of _____,
☐ as an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture;
- (b) If the bidder/offeror or quoter is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in _____ (Insert Country).

10. CERTIFICATE REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

- (a) (1) The offeror certifies, to the best of its knowledge and belief, that --
 - (i) The offeror and/or any of its Principals --
 - (A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - (B) Have ☐ have not ☐, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract violation of Federal or state antitrust statutes relating to the

submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

- (C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission or any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

- (ii) The offeror has ☐ has not ☐, within a 3-year period preceding this offer, had one or more subcontracts terminated for default by any Federal agency.

- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

- (b) The offeror shall provide immediate written notice to the Contractor if, at any time prior to subcontract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the Contractor may render the offeror non-responsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification in addition to other remedies available to the Contractor may terminate the subcontract resulting from this solicitation for default.

11. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

- (a) The offeror certifies that --
- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory --

- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2)
 - (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above _____ (insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization;
 - (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above, and
 - (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

12. CONTINGENT FEE REPRESENTATION AND AGREEMENT

- (a) Representation. The offeror represents that, except for full-time bona fide employees working solely for the offeror, the offeror --
 - (1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this subcontract; and
 - (2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this subcontract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this subcontract.
- (b) Agreement. The offeror agrees to provide information relating to the above Representation as requested by the Contractor and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contractor --
 - (1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or
 - (2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or subcontract number, and representing that the prior SF 119 applies to this offer or quotation.

13. CERTIFICATION REGARDING A DRUG-FREE WORKPLACE

- (a) Definitions. As used in this provision,
 - (1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11-1308.15.
 - (2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by an judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
 - (3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.
 - (4) "Drug-free workplace" means the site(s) for the performance of work done by the subcontractor in connection with a specific subcontract at which employees of the subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled

substance.

- (5) "Employee" means an employee of a subcontractor directly engaged in the performance of work under a Government subcontract. "Directly engaged" is defined to include all direct cost employees and any other subcontractor employee who has other than a minimal impact or involvement in subcontract performance.
- (6) "Individual" means an offeror/subcontractor that has no more than one employee including the offeror/subcontractor.
- (b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds \$25,000, certifies and agrees that, with respect to all employees of the offeror to be employed under a subcontract resulting from this solicitation, it will - no later than 30 calendar days after subcontract award (unless a longer period is agreed in writing), for subcontracts of 30 calendar days or more performance duration, or as soon as possible for subcontracts of less than 30 calendar days performance duration; but in any case, by a date prior to when performance is expected to completed --
 - (1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the subcontractor's workplace and specifying the action that will be taken against employees for violations of such prohibitions;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about --
 - (i) The dangers of drug abuse in the workplace.
 - (ii) The subcontractor's policy of maintaining a drug-free workplace.
 - (iii) Any available drug counseling rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (3) Provide all employees engaged in performance of the subcontract with a copy of the statement required by subparagraph (b)(1) of this provision:
 - (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision that, as a condition of continued employment on the subcontract resulting from this solicitation, the employee will --
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for violation occurring in the workplace no later than 5 calendar days after such conviction;
 - (5) Notify the Contractor in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and
 - (6) Within 30 calendar days after receiving notice under subparagraph (a)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace.
 - (i) Take appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (7) Make a good faith effort to maintain a drug-free workplace through implementations of subparagraph

(b)(1) through (b)(6) of this provision.

- (c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the subcontract resulting from this solicitation.
- (d) Failure of the offeror to provide the certification required by paragraphs (b) or (c) of this provision, renders the offeror unqualified and ineligible for award.
- (e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

14. CLEAN AIR AND WATER CERTIFICATION

(Applicable if the offer exceeds \$100,000 or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

The offeror certifies that --

- (a) Any facility to be used in the performance of this proposed subcontract is ☐, is not ☐ listed on the Environmental Protection Agency List of Violating Facilities.
- (b) The offeror will immediately notify the Contractor, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the offeror proposes to use for the performance of the subcontract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) The offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

15. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(Applicable if the offer exceeds \$100,000)

- (a) The definitions and prohibitions contained in the clause, Limitation on Payment to Influence Certain Federal Transactions, included in this solicitation are hereby incorporated by reference in paragraph (b) of this certificate.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that --
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or, attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a subcontract resulting from this solicitation.
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contractor, and
 - (3) He or she will include the language of this certification in all subcontract awards at any tier and require

that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this subcontract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

16. NOTICE OF PARTICIPATION BY ORGANIZATIONS FOR THE HANDICAPPED

(Applies if solicitation is total or partial small business set-aside)

(a) Definitions.

"Handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any ways limits the selection of any type of employment for which the person would otherwise be qualified.

- (b) The offeror certifies that it is ☐ is not ☐ a public or private organization for the handicapped. An offeror certifying in the affirmative is eligible to participate in any resultant subcontract as if it were a small business concern.
- (c) An offeror certifying as a public or private organization for the handicapped agrees that at least 75 percent of the direct labor required in the performance of the subcontract will be performed by handicapped individuals.

"Public or private organization for the handicapped" means one which (1) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (2) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor, and (3) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

17. AUTHORIZED NEGOTIATORS

(Applicable to negotiated acquisitions)

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Contractor in connection with this request for proposals or quotation; (list names, titles, and telephone numbers of the authorized negotiators).

18. CERTIFICATE OF PROCUREMENT INTEGRITY (SEALED BIDDING) OVER \$100,000

(See Attachment A for Explanation of Federal Procurement Policy Act)

(a) Definitions.

- (1) "Ethics official" means the designated ethics official described in 5 CFR 2638.201 and any other person, including deputy ethics officials described in 5 CFR 2638.204, to whom authority has been delegated by the designated ethics official.
- (2) "Competing subcontractor," with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services means any entity (such as an individual, partnership, corporation, educational institution, nonprofit or not for profit organization, or business unit) legally capable of entering into a contract or subcontract in its own name that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity.
 - (i) The term 'competing subcontractor' includes the incumbent subcontractor in the case of a

contract modification.

- (ii) An entity shall not be considered a competing subcontractor whenever, by action of the contractor or the entity, it is clear that the entity will not, or will no longer, participate in a particular procurement.
 - (iii) For purposes of subsections 27(a) and 27(b) of the Act, the phrase 'representative, agent, or consultant of a competing subcontractor' means any entity, other than an officer or employee of a competing subcontractor, acting on behalf of, or providing advice to, a competing subcontractor with regard to a particular Federal agency procurement.
- (3) "During the conduct of any Contractor procurement of property or services" means, small business innovative research programs, and unsolicited proposals (see subparagraphs 3.c. and 3.d. of this subsection), the period beginning on the earliest date upon which an identifiable, **specific action** is taken for the particular procurement and concluding upon the award or modification of a subcontract or the cancellation of the procurement; provided, however, that in no event shall the conduct of the procurement be deemed to have begun prior to the decision by an authorized agency official to satisfy a specific agency need or requirement by procurement. These actions are--
- (i) Drafting a specification or a statement of work;
 - (ii) Review and approval of a specification;
 - (iii) Requirements computation at an inventory control point;
 - (iv) Development of procurement or purchase requests;
 - (v) Preparation or issuance of a solicitation;
 - (vi) Evaluation of bids or proposals;
 - (vii) Selection of sources;
 - (viii) Conduct of negotiations; or
 - (ix) Review and approval of the award of a subcontract or subcontract modification.
 - (x) Each subcontract award and each subcontract modification constitutes a separate procurement action; i.e., a separate period to which the prohibitions and the requirements of the Act apply.
 - (xi) For and small business innovative research programs, each proposal received by the Contractor shall constitute a separate procurement for purposes of the Act. The conduct of each procurement shall be deemed to have begun upon the date a announcement was made regarding the availability of the Contractor's announcement or the date a solicitation was released for the small business innovative research program. The conduct of the procurement shall end upon the award of a subcontract or subcontract modification incident to each proposal or the written rejection of each specific proposal.
 - (xii) Each unsolicited proposal shall be considered a separate procurement for purposes of the Act. For unsolicited proposals, the conduct of the procurement shall be deemed to have begun upon the publication date of a general statement of needs, or if the Contractor does not publicize a general statement of needs, upon the provision of advance guidance related to needs or the receipt of the unsolicited proposal, whichever is earlier. The conduct of the procurement shall end upon the award of a subcontract or subcontract modification or the rejection of the proposal.
- (4) "Contractor or employee" means a person who is employed by a Federal agency and who is in such

status during the period July 16, 1989, through November 30, 1989, or on or after December 1, 1990. This includes a special contractor employee as defined in section 202 of title 18, United States Code.

- (5) "Modification" means the addition of new work to a subcontract, or the extension of a subcontract, which requires a justification and approval. It does not include an option where all the terms of the option, including option prices, are set forth in the subcontract and all requirements for option exercise have been satisfied, change orders, administrative changes, or any other subcontract changes that are within the scope of the subcontract.
- (6) "Gratuity or other thing of value" includes any gift, favor, entertainment, or other item having monetary value. The phrase includes services, conference fees, vendor promotional training, transportation, lodgings and meals, as well as discounts not available to the general public and loans extended by anyone other than a bank or financial institution. The phrase does not include--
 - (i) Anything for which market value is paid by the procurement official, or on his behalf, by someone other than a competing subcontractor, or a representative, agent, or consultant of the competing subcontractor;
 - (ii) Anything which is paid for by the Contractor, secured under Government subcontract, or accepted by the Government under specific statutory authority;
 - (iii) Plaques or certificates having no intrinsic value; or
 - (iv) Any unsolicited item, other than money, having a market value of \$10 or less per event or presentation. For these purposes, market value means the retail cost the procurement official would incur to purchase the item and, in the case of items such as tickets, refers to their face value. A thing of value given or received or otherwise offered or sought 'directly or indirectly' includes a thing of value directed to a person other than a procurement official, such as a spouse or child, solely because of that person's relationship to the procurement official or on the basis of designation, recommendation, or suggestion by the procurement official.
 - (v) Promotional vendor training does not include training provided by a vendor when a vendor's products are furnished under subcontract to the Contractor and the training is to facilitate the use of those products.
- (7) "Participated personally and substantially" means active and significant involvement of the individual in activities directly related to the procurement. To participate 'personally' means directly, and includes the participation of a subordinate when actually directed by the supervisor in the matter. To participate 'substantially' means that the employee's involvement must be of significance to the matter. For example, the review of procurement documents solely to determine compliance with applicable regulatory, administrative, or budgetary requirements or procedures, does not constitute substantial participation in a procurement. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial.
- (8) "Procurement official" means any employee of the Contractor who has participated personally and substantially in any of the following activities for a particular procurement--
 - (i) Drafting a specification or a statement of work for that procurement;
 - (ii) Review and approval of a specification or statement of work developed for that procurement;
 - (iii) Preparation or development of procurement or purchase requests for that procurement;
 - (iv) The preparation or issuance of a solicitation for that procurement;

- (v) Evaluation of bids or proposals for that procurement;
- (vi) Selection of sources for that procurement;
- (vii) Negotiations to establish the price or terms and conditions of a particular subcontract or subcontract modification; or
- (viii) Review and approval of the award of a subcontract or subcontract modification.
- (ix) The term 'employee of the Contractor' includes a subcontractor, consultant, expert, or advisor (other than a competing subcontractor) acting on behalf of, or providing advice to, the Contractor with respect to any phase of the procurement concerned.
- (x) Generally, an individual will not become a procurement official solely by participating in the following activities--
 - 1) Federal advisory committees that are established and function in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, unless the Federal advisory committee is established or used for the purpose of performing a function listed in subparagraph 3.a. of this subsection and the individual member's participation in that function is personal and substantial;
 - 2) Agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives
 - 3) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement;
 - 4) Clerical functions supporting the conduct of a particular procurement; and
 - 5) For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of most efficient organization analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.
- (xi) An employee of the Contractor does not become a procurement official for a particular procurement until the onset of the employee's personal and substantial participation in that particular procurement.
- (9) "Proprietary information" means information contained in a bid or proposal or otherwise submitted to the Contractor by a competing subcontractor in response to the conduct of a particular Contractor procurement, or in an unsolicited proposal, that has been marked by the competing subcontractor as proprietary information in accordance with applicable law and regulation.
 - (i) Information shall be considered proprietary information, for purposes of section 27 of the Act, only when--
 - 1) An attached transmittal document, such as a cover page or the label of a magnetic media storage container, is clearly marked with a restrictive legend; and
 - 2) The specific portions of the information whose disclosure the competing subcontractor desires to restrict are clearly and separately marked.
 - (ii) Proprietary information does not include information--

- 1) That is otherwise available without restrictions to the Contractor, another competing subcontractor, or the public;
 - 2) Contained in bid documents following bid opening; or
 - 3) That the Contractor determines to release in accordance with the Federal Norm.
- 10) "Source selection information" is information including information stored in electronic, magnetic, audio or video formats, which is prepared or developed for use by the Contractor to conduct a particular procurement and--
- (i) The disclosure of which to a competing subcontractor would jeopardize the integrity or successful completion of the procurement concerned; and
 - (ii) Is required by statute, regulation, or order to be secured in a source selection file or other facility to prevent disclosure.
 - (iii) Source selection information is limited to--
 - 1) Bid prices submitted in response to the Contractor's solicitation for sealed bids, or lists of those bid prices prior to public bid opening;
 - 2) Proposed costs or prices submitted in response to the Contractor's solicitation (for other than sealed bids), or lists of those proposed costs or prices;
 - 3) Source selection plans;
 - 4) Technical evaluation plans;
 - 5) Technical evaluations of proposals;
 - 6) Cost or price evaluations of proposals;
 - 7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a subcontract;
 - 8) Rankings of bids, proposals, or competitors;
 - 9) The reports and evaluations of source selection panels or boards or advisory councils; or
 - 10) Other information marked as 'SOURCE SELECTION INFORMATION' based upon a case-by-case determination by the Head of Procurement of the Contractor, his designee that the information meets the standards in subdivisions 10.a.(i) and (ii) of this subsection.
 - 11) "Possible violation" means, for purposes of the certification requirements, specifically identified or documented circumstances that provide a reasonable basis to believe that a violation of the Act may have occurred. Rumor and hearsay are not, by themselves, a reasonable basis to conclude that a possible violation exists.
- (b) Certifications. As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY

- (1) I, _____ (Name of certifier), am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal

Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), occurring during the conduct of this procurement _____ (solicitation number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of _____ (Name of Offeror) who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, and will report immediately to me any information concerning a violation or possible violation of the Act, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plan bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXIST)

(4) I agree that, if awarded a subcontract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

Signature of the officer or employee responsible for the offer and date: _____

Typed name of the officer or employee responsible for the offer _____

*The Act became effective on December 1, 1990.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of Certification)

- (c) (1) For procurement using sealed bidding procedures, the signed certifications shall be submitted by each bidder with the bid submission except for procurements using two-step sealed bidding procedure (see Subpart 14.5). For those procurements, the certifications shall be submitted with submission of the step two sealed bids. A certificate is not required for indefinite delivery subcontracts unless the total estimated value of all orders eventually to be placed under the subcontract is expected to exceed \$100,000.
- (2) For subcontracts and subcontract modifications that include options, a certificate is required when the aggregate value of the subcontract or subcontract modification and all options exceeds \$100,000.
- (3) Failure of a bidder to submit the signed certificate with its bid shall render the bid non-responsive.
- (d) The offeror may be requested to execute additional certifications at the request of the Contractor. Failure of an offeror to submit the additional certifications shall cause its offer to be rejected.
- (e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Contractor, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interests of the Contractor, such as disqualification of the offeror.
- (f) In making the certification in subparagraph (b)(2) of the certificate, the officer or employees of the competing subcontractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing subcontractor, supplemented by periodic training. These certifications shall be maintained by the subcontractor for 6 years from the date such individual ceases to act on behalf of the subcontractor.

- (g) Certifications under paragraphs (b) and (d) of this provision are material representations of fact upon which reliance will be placed in awarding a contract.

19. CERTIFICATE OF PROCUREMENT INTEGRITY (Sep 1990) (FAR 52.203-8, ALTERNATE I) (OTHER THAN SEALED BIDDING) OVER \$100,000

- (a) Definitions. (See Clause 18)
- (b) Certifications. As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY

- (1) I, _____ (Name of certifier), am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), occurring during the conduct of this procurement _____ (solicitation number).
- (2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of _____ (Name of Offeror) who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, pertaining to this procurement.
- (3) Violations or possible violations: (Continue on plan bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXIST)

- (4) I agree that, if awarded a subcontract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

Signature of the officer or employee responsible for the offer and date _____

Typed name of the officer or employee responsible for the offer _____

*The Act became effective on December 1, 1990.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of Certification)

- (c) For Procurements, including subcontract modifications, in excess of \$100,000 made using procedures other than sealed bidding, the signed certifications shall be submitted by the successful offeror to the Contractor within the time period specified by the Contractor when requesting the certificates except as provided in subparagraphs (c)(1) through (c)(5) of this clause. In no event shall the certificate be submitted subsequent to award of a subcontract or execution of subcontract modification.
- (1) For letter subcontracts, other unpriced subcontracts, or unpriced subcontract modifications, whether or not the unpriced subcontract or modification contains a maximum or not to exceed price, the signed certifications shall be submitted prior to the award of the letter subcontract, unpriced subcontract, or

unpriced subcontract modification, and prior to the definitization of the letter subcontract or the established of the price of the unpriced subcontract or unpriced subcontract modification. The second certification shall apply only to the period between award of the letter subcontract and execution of the document definitizing the letter subcontract, or award of the unpriced subcontract or unpriced subcontract modification and execution of the document establishing the definitive price of such unpriced subcontract or unpriced subcontract modification.

- (2) For basic ordering agreements, prior to the execution of a priced order; prior to the execution of an unpriced order, whether or not the unpriced order contains a maximum or not to exceed price; and, prior to establishing the price of an unpriced order. The second certificate to be submitted for unpriced orders shall apply only to the period between award of the unpriced order and execution of the document establishing the definitive price for such order.
- (3) A certificate is not required for indefinite delivery subcontracts (see Subpart 16.5) unless the total estimated value of all orders eventually to be placed under the subcontract is expected to exceed \$100,000.
- (4) For subcontracts and subcontract modifications which include options, a certificate is required when the aggregate value of the subcontract or subcontract modification and all options (see 3.104-4(e)) exceeds \$100,000.
- (5) For purposes of subcontracts entered into under section B(a) of the SBA, the business entity with whom the SBA subcontracts, and not the SBA, shall be required to comply with the certification requirements of subsection 27(e). The SBA shall obtain the signed certificate from the business entity and forward the certificate to the Contractor prior to the award of a subcontract to the SBA.
- (6) Failure of an offeror to submit the signed certificate within the time prescribed by the Contractor shall cause the offer to be rejected.
- (d) The offeror may be requested to execute additional certifications at the request of the Contractor. Failure of an offeror to submit the additional certifications shall cause its offer to be rejected.
- (e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Contractor, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interests of the Contractor, such as disqualification of the offeror.
- (f) In making the certification in subparagraph (b)(2) of the certificate, the officer or employee of the competing subcontractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing subcontractor, supplemented by periodic training. These certifications shall be maintained by the subcontractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Subcontractor.
- (g) Certifications under paragraphs (b) and (d) of this provision are material representations of fact upon which reliance will be placed in awarding a subcontract.

This is to certify that the information contained in items 1 through 20 of the Representations and Certifications above is accurate to the best of my knowledge and belief.

NAME AND TITLE: _____

FIRM: _____ DATE: _____

SIGNATURE: _____

ATTACHMENT A
EXPLANATION OF THE FEDERAL PROCUREMENT ACT

As of December 1, 1990, the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the "Act"), which had previously been suspended, has been reinstated. The Act, as implemented by the Federal Acquisition Regulation (the "FAR"), prohibits certain activities by contractors and Government procurement officials during the conduct of a Federal agency procurement. In addition, the Act requires that certain persons who participate personally and substantially in the preparation or submission of bids or offers, or contract modifications, in excess of \$100,000, be familiar with the Act, report violations or possible violations of the Act, and execute a certification as described below.

As a person who may participate personally and substantially in federal procurements, you should be aware of the following prohibitions in the Act:

**PROHIBITED CONDUCT BY SUBCONTRACTOR PERSONNEL
(SUBSECTION 27(a))**

From the period beginning with the development, preparation and issuance of a procurement solicitation, through evaluation of bids or proposals, selection of sources and conduct of negotiations, and concluding with the award, modification or extension of a contract (the conduct of any Federal agency or Prime Contractor procurement), no officer, employee, representative, agent, or consultant of the Subcontractor shall knowingly:

- (a) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly, in any discussion of future employment or business opportunity with, any procurement official of such agency or Prime Contractor;
- (b) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value (for example: gifts, favors, entertainment, discounts, passes) to any procurement official of such agency or Prime Contractor; or
- (c) Solicit or obtain, directly or indirectly, from any officer or employee of such agency or Prime Contractor, prior to the award of a contract, any proprietary or source selection information regarding such procurement.

"Proprietary information" is information contained in a bid or proposal, cost or pricing data, or any other information submitted to the Government or its Prime Contractor by the Subcontractor and designated as proprietary in accordance with law or regulation. "Source Selection Information" means material marked with the legend "**SOURCE SELECTION INFORMATION**" or the following material, whether or not marked with the legend:

- a. Listings of offerors and prices.
- b. Listings of bidders prior to bid opening.
- c. Source selection plans.
- d. Technical evaluation plans.
- e. Technical evaluations of competing proposals.
- f. Competitive range determinations.
- g. Rankings (not applicable to sealed bidding).
- h. Source selection board reports and evaluations.
- i. Source selection advisory board recommendations.

**PROHIBITED CONDUCT BY SUBCONTRACTOR PERSONNEL AND GOVERNMENT
AND PRIME CONTRACTOR PROCUREMENT OFFICIALS
(SUBSECTION 27(c))**

During the conduct of any Federal agency or Prime Contractor procurement, no person who is given either authorized or unauthorized access to proprietary or source selection information regarding such procurement shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency, or Prime Contractor, or the Procurement Manager to receive such information.

PROHIBITED CONDUCT BY GOVERNMENT PROCUREMENT OFFICIALS (SUBSECTION 27(c) and (f))

Subsection 27(c) essentially prohibits Government and Prime Contractor procurement officials, during the conduct of a Federal agency or Prime Contractor procurement, from soliciting or accepting a promise of future employment with a competing Subcontractor; from soliciting or demanding any money or other gratuity from a competing Subcontractor, and from disclosing proprietary or source selection information to persons other than those authorized to receive such information.

The Subsection 27(f) prohibitions are essentially post-Government employment restrictions placed on Government procurement officials who participated personally and substantially on a given procurement. These restrictions, however, remain suspended until May 31, 1991. However, the two year post-Government employment restrictions are still applicable to those persons who were procurement officials from July 16, 1989 to November 30, 1989.

SANCTIONS

Serious sanctions may result from violation of the Act. If the subcontract has not been awarded, the agency or Prime Contractor may terminate the procurement. If a subcontract has been awarded, the agency or Prime Contractor may recover all or part of the profit paid to the Subcontractor and may reduce or eliminate the profit to which the Subcontractor would be entitled for the remainder of the work. The agency or Prime Contractor may also void or rescind the subcontract or terminate for default. In addition, there are possibilities for civil fines of up to \$1,000,000, and in the case of knowing and willful solicitation of proprietary or source selection information, criminal penalties, with a maximum five year prison term are possible. Finally, if the agency determines that a knowing violation occurred, it may suspend the Subcontractor from doing business with the Government.

REPORTING VIOLATIONS

The Act also requires that violations or possible violations, occurring after December 1, 1990 be reported. Any officer, employee, representative, agent, or consultant of Subcontractor, who becomes aware of any information which appears to indicate a violation or possible violation of the Act, on or after December 1, 1990, should immediately report the information to the Contractor legal department. If the Contractor's legal department determines that a violation or possible violation has occurred, it will immediately report the matter to the officer or employee responsible for the procurement, as required. For purposes of the Act, possible violations are defined as specifically identified or documented circumstances that provide a reasonable basis to believe that a violation of the Act may have occurred. Rumor and hearsay are not by themselves a reasonable basis to conclude that a possible violation exists.

CERTIFICATIONS

Finally, the Act imposes two certification requirements. First, the officer or employee responsible for preparation of the offer, bid or contract modification must certify, to the best of his or her knowledge or belief that he or she has no information concerning violations or possible violations of the Act or has reported the violation or possible violation in the certificate (the "contract certification"). In addition, he or she must certify that each officer, employee, agent, representative or consultant of the Subcontractor who has participated personally and substantially in the preparation or submission of the bid, offer or contract modification has certified that he or she is familiar with, and will comply with, the requirements of the Act and will report immediately any information concerning violation or possible violation of the Act (the "employee certification"). The subcontract certification is part of the procurement process, and must be signed by the Subcontractor employee who signs the bid, proposal or subcontract modification. In the case of a sealed bid procurement, failure to submit the required certification will cause the bid to be rejected as non-responsive. The actual paragraph or provision containing the subcontract certification is entitled "Certificate of Procurement Integrity (Sealed Bidding) Over \$100,000."